IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/02/2004

C O R A M

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.NOs.1662 of 1997
and
27802 of 2003

Maruthi Minerals rep.by
its Partner Sri P.Thavasiraj ... Petitioner in
both the WPs.
-vs-

1. The State of Tamil Nadu rep.
by its Secretary, Industries
Department, Fort St.George,
Madras-9.

2. The District Collector,
Tiruchirappalli. ... Respondents 1&2
in both the WPs.

3. The District Collector,
Karur Dheeran Chinnamalai
District, Karur. ... Respondent No.3
in WP.1662/1997

4. The Director of Geology and
Mining, Guindy, Chennai-32. ... R3 in WP.27802/
2003 and R4 in
WP.1662/1997

5. The Assistant Director,
Geology and Mining, Tiruchirappalli. ... Respondent No.5
in WP.1662/1997

6. The Indian Garnet Sand Company
(P) Limited, 2, Muthupandian
Avenue, Santhome High Road,
Mylapore, Chennai-4. ... Respondent No.4
in WP.27802/2003
& R6 in WP.1662/
1997

PRAYER in WP.1662 of 1997 : Petition filed under Article 226 of the
Constitution of India praying for the issue of a writ of certiorarified

mandamus calling for the records relating to G.O.3(D) NO.106, Industries (MMA-2) Department, dated 22.11.1996 and quash the same and directing respondents 1 to 3 to pass order on the application of the petitioner, dated 13.4.1993 for grant of lease in respect of the lands covered in Valasiramani Village, Jambumadai Village, Anjakkam Village, Boolancheri Village, Appanallur Village, Konappan Patti and Kulakudi in his application dated 13.4.1993.

PRAYER IN WP.27802 of 2003 : Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus calling for the records relating to G.O.(D) NO.221, dated 17.9.2001 passed by the first respondent and quash the same thereby forbearing the respondents from implementing the above mentioned order.

!For petitioner :: Mr.P.Peppin Fernando
in both the WPs.

^For respondents :: Mr.M.S.Palanisamy,
AGP for in WP.27802/2003 RR1 to 3
Mr.V.Shanmugham for R4

For respondents :: Mr.M.S.Palanisamy, AGP for
in WP.1662/1997 :: RR1 to 5
Mr.V.Shanmugham for R6

:O R D E R

Both the writ petitions have been filed by the same petitioner, viz., M/s.Maruthi Minerals, represented by its partner Mr.P.Thavasiraj. For the sake of convenience, the parties will be referred to in this order as per their rank in W.P.No.1662 of 1997.

2. In brief, the petitioner has made an application, dated 13.4.1993 in Form No.I to the second respondent under Rule 22(1) of the Mineral Concession Rules, 1960 (hereinafter will be referred to as 'the Rules' for short) for the grant of mining lease to quarry garnet sand. In the said application, against Column (viii), namely, the extent of the area for which the mining lease was required, the petitioner has mentioned that they require 42.09 acres of stream beds of Musiri Taluk in Trichy District lying in Government Poramboke lands. While giving the details of the area in respect of which the mining lease was required, as contemplated under Clause (ix) in Form No.I, the petitioner has mentioned the names of the following Villages and Survey Numbers:-

VILLAGE
KHASRA NUMBERS

Valasiramani Village
788, 875, 787, 767, 750, 752, 766, 726, 725, 685, 683, 682, 676, 667, 644, 645, 646, 878, 879, 691, 881, 738, 882
Jambumadai Village

531, 538, 528, 545, 548, 549, 555, 830

Anjakam village
21, 31, 43, 92, 97, 117, 190, 719, 723, 858, 859, 860, 861, 863, 862, 78, 79, 146, 180, 251, 228, 276, 302, 303, 827, 380, 381, 385, 386, 391, 848, 603, 593, 590, 586, 585, 840, 843, 846, 568, 596, 595, 845, 572, 529, 841, 836, 840, 837

Boolancheri village
458, 457, 387, 386, 370, 360, 357, 356, 194, 193, 192, 113, 108, 103, 102, 139, 140, 145, 146, 71, 63, 66, 65, 53, 54, 34, 796, 792, 793, 794, 393, 392, 391, 390, 389, 382, 388, 122

Appananallur village
60, 61, 55, 148, 150, 136, 448, 445, 444, 442, 439, 492, 433, 140, 14 3, 185, 184, 183, 264

3. Similarly, the sixth respondent also, by their application dated 02.7.1993, applied for grant of mining lease for an extent of 24.13.5 hectares. In their application, dated 02.7.1993, the sixth respondent has provided the following details as against Column Nos.(viii) and (ix) :-

"(viii) Extent of the area for River Porambokku in which the mining lease is required. 1) Konappampatti, 2) Jambumadai and 3) Valasiramani villages.

Total area : 24.13.5 Hec.

(ix) Details of the area in respect of which Mining Lease is required:-

DISTRICT
TALUK
VILLAGE
S.NO.
AREA
OCCUPANCY/OWNERSHIP
1.Trichy
Musiri
Konappampatti
Enclosed
3.99.5
River/OdaiPoramboke
2.Trichy
Musiri
Jambumadai
Enclosed
8.63.5
-do-

3.Trichy
Musiri
Valasiramani
Enclosed
11.50.5
-do-

The sixth respondent, in their application dated 02.7.1993, enclosed the details of the above extent as follows:-

STATEMENTS OF SCHEDULE OF THE AREA:
1. Name of the Villages - KONAPPAMPATTI, JAMBUMADAI, VALASIRAMANI

2. Taluk - Musiri

3. District - Trichy

4. Total area of Proposed Mine - 24.13.5 Hectares

5. Length - 6.45 KM

6. Average Width - 50 M

7. M.L.Applied S.F.Nos. -

Part I - KONAPPAMPATTI

Sl.No. S.F.No. Area

1. 38 0.69.5
2. 37 0.73.0
3. 8 0.68.0
4. 9 0.81.0
5. 10 0.73.0
6. 11 0.38.0

3.99.5

Part II - JAMBUMADAI

Sl.No. S.F.No. Area

7. 830 0.81.5
8. 555 1.60.0
9. 549 1.10.0

10. 545 1.29.5
11. 538 1.76.5
12. 531 2.06.0

8.63.5

Part III - VALASIRAMANI

Sl.No. S.F.No. Area

13. 646/2 0.32.5
14. 645 0.91.0
15. 644 0.58.5
16. 667 1.21.5
17. 676 1.02.0
18. 691 1.64.5
19. 719 0.84.5
20. 881 2.41.5
21. 738 1.21.0
22. 882 1.33.5

11.50.5
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4. After receipt of both the applications, namely, the application filed by the petitioner, dated 13.4.1993 and the application filed by the sixth respondent, dated 02.7.1993, the second respondent District Collector, who is the recommending authority, forwarded both the applications to the licensing authority, namely, the first respondent.

5. The first respondent, after careful consideration of both the applications, by G.O.3(D) No.106, Industries (MMA-2) Department, dated 2 2.11.1996, granted mining lease to the sixth respondent with respect to an extent of 24.13.5 hectares, as per the following details :-

Village	S.F.No.	Reg.& Extent applied for for lease	Extent recommended for lease	Remarks and area
Konnappam-patti	38	0.69.5	0.69.5	
	37	0.73.0	0.61.0	
	8	0.60.0	0.46.0	
	9	0.01.0	0.01.0	
	10	0.73.0	0.73.0	

11/1 0.35.0 0.35.0

Total 3.99.5 3.65.5

Jambumadai 830 0.01.5 0.75.5
555 1.60.0 1.43.0
549 1.10.0 0.94.5
545 1.29.5 0.05.0
538 1.76.5 1.52.5
531 2.06.0 1.06.0

Total 0.63.5 7.36.5

Valasira-
mani 646/2 0.32.5 0.20.5
645 0.91.0 0.85.5
644 0.50.0 0.50.5
657 1.21.5 1.21.5
676 1.02.0 1.02.0
691 1.64.5 1.64.5
719/2 0.84.5 --
881 2.41.5 1.61.5
738 1.21.0 0.82.0
882 1.33.5 --

Total 11.50.5 8.04.0

Grand Total 24.13.5 19.06.0
Hectares

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6. Pursuant to the said grant of lease, the sixth respondent had taken possession of the lands on 11.1.1997 to an extent of 24.13.5 Hectares, as referred to above, which are located in Survey Numbers referred to above, in Konnappampatti, Jambumadai and Valasiramani Villages and started quarrying.

7.1. However, the petitioner had chosen to file W.P.No.1662 of 1997 challenging the said grant of lease in favour of the sixth respondent and the same was admitted by this Court on 06.2.1997 and, thereafter, the Government by G.O.(D)No.221, Industries (MMA-2) Department, dated 17.9.2001, refused to grant lease to the petitioner for the following reasons:-

i.The petitioner firm failed to produce the "A" Register, Adangal, FMB Sketches, etc.

ii.The petitioner firm failed to precisely demarcate the area applied for

mining lease, i.e. 42.09 acres out of an extent of 169.68.50 hectares by producing FMB Sketches. In the absence of vital document, i.e. actual area applied for mining lease, the mining lease application is defective and incomplete.

iii.On 19.12.1995, the petitioner firm was requested to appear for an enquiry with all original documents before the Special Tahsildar (Mines), but they neither produced the documents nor appeared for enquiry.

iv.The petitioner firm is a partnership firm comprising 3 partners. As per the partnership deed dated 06.4.1993, Tvl.D.Devaraj, G.Sekar and Tmt.S.Lingam Suyamburajan are the partners. But Thiru G.Sekar said to be one of the partners of the firm has alleged that his signature was forged in the partnership deed. The forged documents have been used by one Thiru D.Devaraj for making the Mi ning lease application dated 12.4.1993. The power of attorney has been created in favour of Thiru D.Devaraj forging his signature.

v.The petitioner firm furnished only the affidavit of General Power Attorney holder. Affidavits from the other two partners were also not produced by the firm ".

7.2. Aggrieved by the said Government Order, refusing to grant mining lease to the petitioner, the petitioner filed the writ petition in W.P.No.27802 of 2003.

8. Mr.Peppin Fernando, learned counsel for the petitioner contends that :-

i.the grant of mining lease in favour of the sixth respondent by G.O.3(D).No.106, Industries (MMA-2) Department, dated 22.11.1996, which is challenged in W.P.No.1662 of 1997 is arbitrary and discriminatory, as the first respondent - licensing authority failed to consider the application filed by the petitioner on 13.4.1993 while passing orders on the application filed by the sixth respondent on 02.7.1993 even though both the applications were made for the same survey numbers; and
ii.that in any event, either before granting the impugned licence to the sixth respondent by G.O.3(D)No.106, Industries (MMA-2) Department, dated 22.11.1996, which is challenged in W.P.No.1662 of 1997 or before refusing to grant the same by G.O.(D)NO.221, Industries (MMA-2) Department, dated 17.9.2001, which is challenged in W.P.NO.27802 of 20 03, the first respondent ought to have given an opportunity to the petitioner firm as contemplated under rule 26(1) of the Rules, and the failure to give such an opportunity to the petitioner to furnish the relevant material particulars as contemplated in Form No.I and requiring the petitioner firm to supply such omissions are in gross violation of sub-Rules (2) and (3) of Rule 26 of the Rules.

9. Per contra, Mr.M.S.Palanisamy, learned Additional Government Pleader appearing for Respondents 1 to 5 as well as Mr.V.Shanmugham, learned counsel appearing for the sixth respondent, invited my attention to the application filed by the petitioner and submitted that when the petitioner had not specifically mentioned the extent and area of the lands which are required

for lease, they are not entitled to complain against either the grant of lease in favour of the sixth respondent by G.O.3(D)No.106, Industries (MMA-2) Department, dated 22.11.1996, or to challenge G.O.(D)NO.221, Industries (MMA-2) Department, dated 17.9.2001, refusing to grant lease.

10. I have given a careful consideration to the submissions of both sides.

11.1. In this regard, I am obliged to refer to Rule 22(1) Form No. I, Clauses (viii) and (ix), so also, Sub-Rules (1), (2) and (3) of Rule 26, which are extracted as follows:-

11.2. 22. Applications for grant of mining leases:-
(1) An application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form-I through such officer or authority as the State Government may specify in this behalf.
11.3. Form-I:
(viii) extent of the area for which mining lease is required.
(ix) Details of the area in respect of which mining lease is required.

_____
District Taluqua Village Khasra Plot Ownership/
No. No. Area
Occupancy

_____

11.4. Rule 26 :- Refusal of application for grant and renewal of mining lease:-
(1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.
(2) An application for the grant or renewal of a mining lease made under rule 22 or Rule 24A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in sub-clauses (d), (e), (f), (g) and (h) of clause (i) of sub-rule (3) of rule 22.

(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall by notice, require the applicant to supply the omission or, as the case may be, furnish the document, without delay and in any case not later than sixty days from the date of receipt of the said notice by the applicant".
(Emphasis supplied)

12.1. From the above facts, it is clear that while the petitioner had applied for grant of lease for an extent of 42.09 acres in Valasiramani Vilalge, Jambumadai Village, Anjakam Village, Boolancheri Village, Appanallur

Village, Konappanpatti and Kulakudi Village in the Survey Numbers referred to above, the sixth respondent had applied for 2 4-13-5 Hectares in Konnappampatti, Jambumadai and Valasiramani Villages in Survey Numbers referred to above. The extent and area applied for by the writ petitioner and the sixth respondent are overlapping. However, it is not in dispute that the petitioner firm in their application has not specified the extent in the Survey Numbers. But the area referred to in the application filed by the petitioner concededly works out to an extent of 419 acres (169.68.50 hectares). Unless the petitioner firm gives the details of 42.09 acres, for which they have applied for lease, as rightly weighed by the Government, it is not possible to consider the application of the petitioner.

12.2. Even though Mr.Peppin Fernando, learned counsel submits that the petitioner firm was not given an opportunity before passing the order under Rule 26(1) of the Rules refusing to grant the mining lease to the writ petitioner, the relevant records disclose that notice was given to the petitioner through the Collector requiring the petitioner to appear for a personal enquiry on 30.5.2001 before the District Collector. That apart, in spite of service of the said notice on the petitioner on 26.5.2001, he has not chosen to avail such opportunity. The Government have also given an oppo rtunity to the petitioner to appear personally on 28.6.2001 by their letter dated 04.6.2001, but again the petitioner had not chosen to avail the said opportunity to appear before the Government on 28.6.2001. Hence, I do not see any violation of Rule 26(1) of the Rules.

12.3. I find some force in the contention of Mr.Peppin Fernando, learned counsel for the petitioner that there is a violation of Rule 26(2) and (3) in passing the impugned G.O.(D)No.221, Industries (MMA-2) Department, dated 17.9.2001. As per Rule 26(2), an application for the grant or renewal of a mining lease made under Rule 22 shall not be refused by the State Government only on the ground that Form No.I is not complete in all material particulars, and in any event, as per Rule 26(3), even though it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall by notice, require the applicant to supply the omission or furnish the documents, not later than sixty days from the date of receipt of the said notice by the applicant. Therefore, even assuming that there was an omission on the part of the petitioner in not mentioning the details of the extent of 42.09 acres, for which the mining lease was applied for, the Government ought to have called upon the petitioner to furnish such details by giving notice as required under Rule 26 (2) and (3) of the Rules by giving an appropriate notice as contemplated thereunder. The failure to give such an opportunity to the petitioner as per Rule 26(3) of the Rules and refusing to grant lease merely for want of particulars of such omissions, in violation of Rule 26(2) of the Rules is, therefore, illegal.

13. At this point of time, the learned Additional Government Pleader brought to my notice that as per the report of the Director of Geology and Mining, dated 25.3.1997 addressed to the Secretary to the Government, Industries Department, the Assistant Director (I/C) Tiruchirappalli in his letter dated 13.2.1997 requested the petitioner to produce the mining plan,

extracts of 'A' Register, Adangal F.M.B.Sketch etc., but there was no response from the petitioner. In my considered opinion, the said notice, dated 13.2.1997 issued by the Assistant Director (i/c) Tiruchirappalli, cannot be construed as a notice contemplated under Rule 26(3) of the Rules, which should have been issued by the Government, giving 60 days time to the petitioner to furnish such of those necessary particulars. Therefore, the refusal to grant lease by G.O.(D)No.221, Industries (MMA-2) Department, dated 17.9.2001 to the petitioner is, in my considered opinion, violative of Rules 26(2) and 26(3) of the Rules.

14. For all these reasons, I am inclined to pass the following order:-

i) The petitioner firm, having not furnished the details of the area in respect of which the lease was required, has no locus standi to challenge G.O.3(D) No.106, Industries (MMA-2) Department, dated 22.11.1 996, granting mining lease in favour of the sixth respondent;

ii) The refusal of grant of lease in favour of the writ petitioner by G.O.(D)No.221, dated 17.9.2001, is illegal and contrary to Rule 26(2) and (3) and, therefore, the same is set aside and consequently, the matter is remitted to the Government directing the Government to give a notice under Rule 26(3) of the Rules requiring the petitioner firm to give necessary material particulars which are found to be omitted in their application and on receipt of such material particulars, the Government shall pass appropriate orders within 60 days from the date of receipt of the same.

15. In the result, W.P.No.1662 of 1997 is dismissed and W.P.No.27802 of 2003 is allowed with the above directions.

JS

Index : Yes
Internet : Yes

To

1. The State of Tamil Nadu rep.
by its Secretary, Industries
Department, Fort St.George,
Madras-9.

2. The District Collector,
Tiruchirappalli.

3. The District Collector,
Karur Dheeran Chinnamalai

District, Karur.

4. The Director of Geology and
Mining, Guindy, Chennai-32.

5. The Assistant Director,
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(P) Limited, 2, Muthupandian
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